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Docket No. NHTSA-01-11157 - /8
U.S. DOT Docket Management
U.S. Department of Transportation
400 Seventh Street, SW Room PL-401
Washington, DC 20590

**Tire Safety Information: Notice of Proposed Rulemaking
66 FR 65536 *et seq.*, December 19, 2002**

I. Introduction.

Advocates for Highway and Auto Safety (Advocates) submits the following comments in response to the National Highway Traffic Safety Administration's (NHTSA) request for comments on several initiatives in the instant notice of proposed rulemaking to increase tire safety by promoting improved consumer understanding and to facilitate tire replacement and recalls.

Advocates supports most of the proposals in this rulemaking action, including the extension of passenger car labeling requirements, including those requiring the labeling of combined occupant and cargo weight capacity and designated seating positions, to all light trucks and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less. Advocates also supports the agency's proposal that the Tire Identification Number (TIN), size designation, maximum permissible inflation pressure, and maximum load rating be placed on both sides of light vehicle tires. With respect to the TIN alone, Advocates supports the agency's initiative to reorder consumer information so that the first six (6) characters contain the necessary information for determining whether a particular tire is subject to recall. We also support the sequencing of this information so that the first two (2) characters reflect the plant code where the tire was manufactured and the following four characters would reflect the date code. We also support NHTSA's proposed revisions for tire inflation pressure and load limit information on the vehicle placard, including placard size and color; owner's manual entries containing discussion of tire labeling; and recommended tire inflation pressures, tire terminology glossary, tire care advice, and vehicle load limits.

However, Advocates will not support the agency's proposal to require that each character of the six (6) alphanumeric code be 6 mm or 1/4" high. 66 FR 65536, 65537 (December 19, 2001). As discussed below, this proposal is a capricious choice because the agency has gathered no information of record on the actual readability of 1/4", low-contrast characters representing recall and tire dating information. NHTSA in this rulemaking has

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dismissed prior submissions by Advocates detailing the problems of consumers reading tiny black-on-black characters on tire sidewalls and, without any evidence in the record of determining actual reading comprehension by consumers, has arbitrarily justified the adoption of this character size on the basis of inapposite arguments totally without merit.

II. Tire Sidewall Date Code.

As indicated above, Advocates strongly opposes NHTSA's proposal to increase the size of the proposed 4-character tire sidewall dating code to only 1/4". This proposal comes on the heels of the agency's action in 1999 to **reduce** the size of the date code from one-quarter of an inch (1/4") to five-thirty-seconds of an inch (5/32") when it decided to augment the code from a three numeral to a four numeral code. 64 FR 36807 *et seq.* (July 8, 1999). In offering such a reduction in its previous notice of proposed rulemaking, the agency argued that NHTSA employees had examined a sidewall with the smaller code "who indicated that the 4 mm [5/32"] digits were clearly readable." 63 FR 55832, 55834 (October 19, 1998). The agency went on to assert, in addition, that "[t]he reduction of the size of the digits is so slight as to be barely perceptible."¹ *Id.* In that final rule, the agency both ignored Advocates detailed explanation that a primary difficulty with reading very small sidewall entries such as the date code was because they are presented as black-on-black raised digits and instead rationalized its proposal by relying on irrelevant arguments about black-on-white lettering and font sizes.²

¹The threshold issue is, of course, whether either size is "perceptible" to many thousands of American tire owners with degraded vision making it extremely difficult or impossible to read tiny black-on-black sidewall characters. Moreover, nowhere in the 1998 notice did NHTSA explain why, if the reduction in size was so *de minimis*, it was necessary in the first instance to compromise the size of the date code, apart from a general argument about restricted sidewall space on current and future tires. The agency, however, apparently has no qualms about giant lettering proclaiming tire brand and model taking up most the "restricted" sidewall space on contemporary tires.

²This is why the agency's footnoted argument in the instant notice is thoroughly inapposite and irrelevant to the arguments Advocates put forth in its comments dated December 17, 1998, to docket No. NHTSA-98-4550 about poor Contrast Sensitivity Function (CSF) among large portions of the U.S. population who need to be able to easily read recall and date code information. In its footnoted argument, NHTSA proclaims again that "4 mm is approximately the equivalent of font size 16 in Windows 95, which is approximately double the font size used in the Federal Register and also approximately double the size of the largest letters found on U.S. quarters being minted then." 66 FR 65539. It is easy to dispose of this argument: Advocates assumes as a given that agency personnel as well as others reading the Federal Register, either on computer monitor screen or in hard copy, are not attempting to read
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As we discussed at length in our submission to the 1998 docket, visual detection and comprehension of symbols, including letters and numerals, is a complex visual function that can be compromised in a wide variety of ways. As they age or experience the problems of a wide variety of visual pathologies, such as cataracts, glaucoma, macular degeneration, people often suffer degradation of static acuity and, most importantly, usually lose Contrast Sensitivity Function (CSF) in their foveal vision. Loss of both static acuity and/or contrast vision is especially common among older people suffering from cataracts and diabetic-related visual disorders, especially retinopathy. Many thousands of licensed drivers suffer from diabetic retinopathy which is often non-proliferative. However, non-proliferative or background retinopathy frequently leads to macular edema that involves a gradual blurring of vision. One of the visual disabilities associated with macular edema is considerable difficulty with any close visual work, such as reading. This condition would make it very hard for consumers to read either 5/32" or 1/4" black-on-black date code numerals. See, e.g., Gary Cassel, *et al.*, *The Eye Book: A Complete Guide to Eye Disorders and Health*, The Johns Hopkins University Press, 1998.

Consequently, it is well-established by ophthalmologic practice that many hundreds of thousands of people may have excellent static acuity of 20/20 Snellen and yet have extraordinarily poor contrast vision or loss of CSF. CSF is a measure of the visual system's ability to distinguish any object against its background or visual context. (Losses in low-contrast acuity correlate closely with the centration of the ablation zone and people who have less-centered ablations also have greater deficits in low-contrast visual acuity.) CSF, accordingly, is a direct measure of visual function rather than binocular sensory function. Separate testing must be conducted by health care providers and other authorities concerned with visual capability to determine any loss of CSF.³ However, the standard Snellen static

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black-on-black letters and numbers, but, rather, are reading black text on a bright white background. The agency's argument is utterly without merit: consumers with poor vision, including substantial losses of CSF, are usually on their hands and knees trying to read black-on-black sidewall alphanumeric codes. Instead of taking strong action to dramatically improve readability in the public interest, the agency instead seems bent on dismissing all arguments contrary to its preconceived decision on date code size and instead to make reading sidewall date codes about as difficult as possible for consumers.

³There are various systems now in use to measure contrast sensitivity which is presented as a curve plotting the lowest contrast level an individual can detect for a given size target. The x-axis of the curve is for spatial frequency, while the y-axis is for contrast sensitivity. Accordingly, low sensitivity is then the inverse of contrast level. Therefore, the higher the contrast sensitivity, the lower the contrast level at which the individual can detect a target. Most commercially available contrast sensitivity tests provide measures for four or five
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acuity test provides no information on contrast vision ability because the standard chart provides block letters in deeply saturated black against a stark white background, thus providing the very highest possible object contrast. In addition, Snellen tests are conducted in good lighting conditions.

Advocates repeats these arguments from its 1998 submission to NHTSA docket No. 98-4550 because the agency apparently refuses to acknowledge the role of visual pathologies and, especially, poor CSF in the poor readability of sidewall date codes by many thousands of consumers. This refusal to engage this issue strongly evidences an agency that has rejected keeping an open mind on the merits, but rather has made a predetermined rulemaking decision that no contrary information will sway. In addition, the agency may well not understand the facts of degraded vision, especially of poor CSF, because it has repeated its reliance on the irrelevant invocation of the font sizes of letters and numbers for computers and the Federal Register, both of which are read by users in the high contrast context of black characters on white backgrounds. Moreover, we repeat these arguments because the agency apparently believes that, instead of understanding and addressing the widespread visual pathologies that encumber numerous tire owners in reading black-on-black tiny characters in sidewall date codes, it can simply claim that it has no significant consumer complaints about black-on-black date codes and, as a consequence, it can attempt to shift its burdens of determining what actually is the readability of tiny black-on-black date codes to the shoulders of consumer organizations. NHTSA's simple reiteration of its irrelevant, simplistic assertions about font size and printed copy legibility is not in keeping with the agency's usual reliance on scientific evidence and consumer surveys to inform its regulatory decisionmaking. This continuing dismissal of important contrary views by invoking inapposite arguments openly diminishes the agency's credibility, particularly in this rulemaking arena which is a direct response to a congressional mandate to address consumer issues affecting tire safety.

Advocates, however, is under no obligation to conduct public surveys in lieu of the agency's own responsibility to conduct appropriate research and investigation to determine the actual readability of its proposed date code size and its willingness to accept black-on-black alphanumeric characters once the issue has been repeatedly brought to its attention. By relying on the extent of consumer complaints about the readability of 1/4" date codes, the agency undermines its own position on the merits of the manifold changes proposed in this rulemaking, virtually none of which is based on any documented, extensive, and sustained past consumer complaints about label location or the dearth of tire information in owner's manuals.

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size bar patterns (spatial frequencies) and each of these spatial frequencies is presented at eight to ten contrast levels. When an individual is tested for the highest contrast sensitivity level s/he can detect for each spatial frequency, this results in plots for rendering their specific CSF curve.

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NHTSA appears to be determined to re-institute a 1/4" black-on-black date code on tire sidewalls in the face of credible information from Advocates that widespread visual pathologies may make it virtually impossible for many thousands of tire owners and buyers to read tiny date codes. This agency stance on the merits disregards both the spirit and the letter of the Americans With Disabilities Act in its dismissal of the need to provide reasonable accommodation of those with visual disabilities in its consumer information proposals that can have direct consequences for public health and safety. This proposal continues to evidence an intransigent agency position that clearly intends to disregard the merits of a documented, opposing point of view and without an adequate foundation in the administrative record for the proposed action. Advocates believes that disregarding visual incapacitation making it impossible for many tire owners to read a tiny black-on-black tire sidewall date code and adopting the proposal as forwarded in this notice demonstrates a calloused indifference to consumer needs and constitutes an open abuse of agency discretion.

Advocates wants to make it clear that it has no essential opposition to small date codes if they are presented on tire sidewalls in high contrast characters, such as white on the black sidewall background. However, 1/4" black-on-black characters ignores and, indeed, patently rejects the needs of many thousands of Americans with visual impairments.

We also would like to draw to the agency's attention, and to state for the administrative record of this rulemaking, that Advocates placed two (2) telephone calls to the agency contact listed for this proposed action. Neither of those calls were returned. 66 FR 65536. Those two calls were for the purpose of drawing the agency's attention to the fact that NHTSA indicated in the preamble of this proposed rule that *The Focus Group Report*, dated March 20, 2001, which explored consumer reactions to various aspects of tire labeling, was stated to have been placed in this docket. *Id.* at 65547. As of the date of these comments submitted by Advocates, February 14, 2002, no such report has been entered in the public docket. As a consequence, this rulemaking has provided the public an incomplete administrative record and, hence, this rulemaking is defective unless the agency expeditiously enters the cited report into the docket and provides an extended period for public review and comment. Moreover, we note that, although focus groups were held to determine consumer views on tire labeling, no controlled surveys of consumer ability to read 5/32" or 1/4" black-on-black tire sidewall characters was conducted at any time in the last few years when NHTSA was engaged with this topic in successive rulemaking actions. Instead, the agency has relied on essentially *a priori* arguments that are inapposite and inapplicable to the merits of the regulatory issue before it for resolution.

Respectfully submitted,
ORIGINAL SIGNED
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